

## COMMITTEE REPORT

**Date:** 3 December 2015      **Ward:** Micklegate  
**Team:** Major and      **Parish:** Micklegate Planning  
Commercial Team      Panel

**Reference:** 15/01697/FUL  
**Application at:** Cycle Heaven 2 Bishopthorpe Road York YO23 1JJ  
**For:** Change of use from retail (use class A1) to mixed use retail with cycle repair facilities , cafe/restaurant and drinking establishment (use class A1/A3/A4) with 1no additional flat on first floor (use class C3)  
**By:** Mr Terence Ashton  
**Application Type:** Full Application  
**Target Date:** 2 December 2015  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 The application relates to the former Cycle Heaven retail store and workshop, which occupies 2 and 4 Bishopthorpe Road and is positioned on the corner of Darnborough Street. At upper level, the premises have a showroom above no. 2, and there are 2 flats which are accessed via a passage between the premises and 3 Darnborough Street. The premises have been extended at the rear and there is no rear yard. There is a forecourt in front of the premises on Darnborough Street.

1.2 The stretch of Bishopthorpe Road in which the premises are located contains a row of commercial uses, including retail, restaurants and hot food takeaways. Between Darnborough Street and Ebor Street are the host premises, a fruit and vegetable shop, a Chinese food takeaway and a convenience store. There is a rear access to the application site behind the aforementioned premises which leads out onto Ebor Street.

1.3 The application is to use the ground floor of the premises as a cafe/bar, which would retain an amount of retail space and cycle repair facilities. It is proposed to convert the upper floor (where the showroom was) to a third flat.

1.4 The outside forecourt is shown in part as a seating area for the cafe. The intent is to sell pizzas, which would be oven cooked. An extract vent for the kitchen is proposed, which would exit at roof level, via an existing sun-light. The proposed closing time (as stated within the application form) would be midnight.

1.5 A premises licence has already been granted for the proposed use. The permitted opening time is until 00.30 and the areas/times where 'licensed activities may take place are restricted, to the ground floor front rooms in nos. 2 and 2a and outside only until 20.00.

1.6 The application has been called to committee by Cllr Kramm, so the material considerations raised in objections may be assessed by committee.

## **2.0 POLICY CONTEXT**

2.1 Development Plan Allocation: Shopping  
Areas of Archaeological Interest: City Centre Area 0006

2.2 Policies:

CYS9 No loss of local or village shops  
CYH11 Conversion of upper floors to housing  
CYS6 Control of food and drink (A3) uses

## **3.0 CONSULTATIONS**

### Highway Network Management

3.1 No objection. Officers do not envisage a material increase in traffic generation, including deliveries, from that of its current lawful use as shop/residential to cafe/residential.

3.2 Officers have asked for cycle parking in accordance with Local Plan standards -  
- Preferred: 1 covered and secure space per flat  
- Cafe/restaurant - 1 per 10m customer floor space for staff/visitors  
- Retail - 1 space per 36m<sup>2</sup>

### Public Protection

3.3 Officers note there are residents within the host building and next door. They have asked for details of odour mitigation and clarification of the height of the extraction flue in relation to the roof eaves and ridge. It is noted that any ventilation system must ensure compliance with the DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems.

3.4 Noise levels within the site are likely to increase as a consequence of cooking, any music and noise from customers. Officers have asked for details of noise insulation to ensure noise escaping the premises would not have an adverse effect on residents.

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3.5 No objection.

## Police Architectural Liaison Officer

3.6 No objection. No concerns or issues raised.

## Publicity and Neighbour Notification

3.7 There have been objections to the application from residents in Darnborough Street (nos. 2, 3, and 25) and a petition signed by occupants of nos. 16, 18, 22, 23, 25, 29, and 31. There have also been 6 letters in support of the scheme. Support in general is for the type of business which is proposed and it is regarded to be a positive addition to the street.

3.8 The objections are on the following grounds

- Loss of privacy and overlooking of houses next door and on the opposite side of Darnborough Street,
- Noise disturbance from the premises as a consequence of comings and goings of customers, including those getting takeaways and arriving by car.
- Concerns that the premises license, which controls areas of the premises where alcohol would be served, would be breached, in particular in no.4 where the plans show cafe space and the license does not permit the consumption of alcohol. It is also asked why the premises have asked to open until 00.30, when they are only permitted to sell alcohol until 23.00.
- Unsociable behaviour due to alcohol consumption and associated disorder in the locality. Concerns adequate measures will not be in place to ensure staff can control customers in this respect. The problems would be worse on race days.
- Use of forecourt – concerns over creation of litter and the being blown into the surrounding area; safety issues, if the area is over-used/capacity exceeded; noise generated by customers.
- Increased risk of burglary
- Concerns over fire safety and compliance with the Clean Air Act.
- Health and safety concerns as a consequence of the proposed kitchen, related to storage of food and materials and cooking.
- There are already road safety issues on Darnborough Street as a consequence of customers and delivery vehicles associated with the bike shop. The problem would worsen with the proposed use.
- Noise and odour as a consequence of the kitchen. There is no clear explanation of food to be sold and precise data on the measures for dealing with odour, that it would be fit for purpose and the finished appearance.

- Drainage – whether the existing system can cope with the increase in use due to a commercial operation and whether there would be adverse effect from cooking oils and alike being disposed of via the drains.

## **4.0 APPRAISAL**

### **KEY ISSUES**

4.1 The key issues in this application are as follows -

- Principle of the proposed use
- Residential Amenity
- Highway safety

### **PRINCIPLE OF THE PROPOSED USE**

4.2 The change of use proposed, to a mixed use does not conflict in principle with policies within the 2005 Draft Local Plan or national policy, within the National Planning Policy Framework (NPPF).

4.3 National guidance states Local Planning Authorities should support emerging business sectors and accommodate their needs. The type of uses proposed, which offers multiple and comprehensive use of the building, is the type of development which are promoted within sections 1 and 8 of the NPPF, in particular paragraph 69 which aims to achieve places which provide mixed-use developments, strong neighbourhood centres and active street frontages,

4.4 A relevant local policy is S9, which relates to local shops. The change of use is compliant with the policy, as an amount of A1 retail use remains and in any event, there would be no loss of local facility, as there are other premises in the area which can accommodate A1 uses.

4.5 The addition of a flat at upper floor level is consistent with Local Plan policy H11, which encourages such development as part of meeting housing need. H11 recommends such changes subject to adequate residential amenity.

### **RESIDENTIAL AMENITY**

4.6 National guidance within the NPPG states that some commercial developments can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity.

4.7 The guidance states that when proposed developments could include activities that would be covered by the licensing regime, local planning authorities should consider whether the potential for adverse noise impacts will be addressed through licensing control. Local planning authorities should not however presume that licence conditions will provide for noise management in all instances and should liaise with the licensing authority. The NPPG also requires a good standard of amenity for existing and future occupants.

4.8 2005 Draft Local Plan Policy S6 states that planning permission for the development of premises for food and drink uses will only be granted provided:

- There is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter.
- The opening hours are restricted where this is necessary to protect the amenity of surrounding occupiers.
- Car and cycle parking meets the standards defined in the Local Plan.
- Acceptable external flues and means of extraction have been proposed.
- Where security issues have been addressed.

Whether the development would lead to a loss of privacy / overlook neighbours

4.9 The neighbouring house on Darnborough Street has no windows in the side elevation. At the rear of the application site a mono-pitched roof slopes down towards the side boundary. There are 4 roof-lights which would serve toilets and a bin store. There would be limited views up through windows, which are perpendicular to the rear elevation of the neighbouring dwelling and no undue overlooking would occur.

4.10 There would be a customer seating area at the corner of the premises (the extent where the shop-front continues along Darnborough Street). Outside seating is also proposed within part of the forecourt. The seating area is at the opposite side of the forecourt to the neighbouring house. Customers sat in these areas would not cause undue overlooking, or loss of privacy to the house opposite, which is setback from the road and has its own front garden, nor to the adjoining neighbour, due to the intervening access way and cycle store.

4.11 No details of CCTV have been provided with the application. The premises license requires any external smoking area to be covered by CCTV. A planning condition can be imposed to agree the extent of coverage of any external cameras, if required, so they do not overlook surrounding property.

## Traffic noise

4.12 The site is on a commercial part of Bishopthorpe Road, with a car park nearby. Darnborough Street is a residential street, with parking restrictions. There are other premises which open in the evenings and no evidence has been put forward that traffic noise as a consequence is harmful to amenity. The site is within a local centre, which by virtue of its very nature, the majority of customers will be walking, and some cycling, in particular in this case given the proposed use.

## General noise

4.13 The cafe would open later than the existing shop, but there are other premises on the street that open on evenings (convenience stores, takeaways, restaurants and a public house). There is potential for noise disturbance, in particular given the proximity of the site to a residential street and the presence of the outside seating area, forecourt and Darnborough Street entrance. There could be noise disturbance caused by the comings and goings of customers and persons congregating in the forecourt.

4.14 Where possible, the NPPF recommends the use of planning conditions, to mitigate the impact of development and make proposals acceptable.

4.15 The applicants have advised they propose to serve until 23.00 (in accordance with the premises licence) and then close at 23.30. After 23.00 is regarded by the World Health Organisation as night time. To restrict the operating times as such is deemed necessary in the interests of residential amenity.

4.16 The side door (currently the main entrance) would not be used in the evenings. A planning condition can require this, which would keep customer movements on the Bishopthorpe Road side of the premises, away from Darnborough Street.

4.17 The outside seating area is away from the neighbouring house, and where there will be road traffic noise. Because of the need for circulation there would be space for around 3 tables and the area is only allowed through licensing to operate until 20.00. A planning condition is proposed to agree the layout and could consequently restrict numbers of customers within the forecourt. It is also noted that the premises licence can be varied or revoked if necessary and should there be public nuisance or harmful noise disturbance.

4.18 The change of use triggers the need for a building regulations application, within which legislation are requirements for standards regarding the transmission of sound between buildings and their uses. National planning guidance states that the planning process should not duplicate other legislation, which would be applicable in

this case and also with regards raised about fire safety and general health and safety with the cafe/restaurant. Planning conditions can also control noise from within the premises, from music/amplified noise and plant so it does not exceed current background noise levels.

4.19 A planning condition will be required to ensure that noise from any kitchen equipment and other vents/extraction do not cause noise disturbance. Typical requirement is for it to be demonstrated equipment is below existing background noise levels. Noise levels within neighbouring dwellings (as a consequence of the proposed plant) must not exceed 35 dB on average during the daytime. The vent proposed has a running noise of 36dB, which would not cause undue disturbance.

### Smells and odour

4.20 It is proposed to sell pizzas at the cafe, which would be oven cooked only. A high level discharge is proposed, at roof level. The options presented for discharge are either via an existing sun-pipe, which terminates just above eaves level or via the chimney stack, which is above ridge level. According to DEFRA guidance - Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (Annex C: Risk Assessment for Odour) the risk for grease and odour is low, based upon the type of food proposed. However there are receptors close by - the flats above the proposed cafe and a neighbouring house.

4.21 The duct proposed by the applicants may need additional filters, however these would be internal and considering the type and amount of food to be sold and proposed high level discharge there is adequate evidence that a system could be designed which would not cause undue smells/cooking odour. A planning condition will be needed to agree food which will be sold and the full specification of the kitchen equipment and that it would be compliant with DEFRA guidelines.

### Waste

4.22 It proposed all waste from the premises will be stored within the building, at the rear, and this is identified on the proposed floor plans. There is no rear yard. There are already some issues with waste in the rear alley and this has been referenced by the neighbour. The application site has adequate internal storage space for waste. It is proposed the new flat would have use of the side entrance where waste and bins could be stored. A planning condition can be used to prevent waste being stored in the forecourt, in the interests of visual and residential amenity.

### Car and cycle parking

4.23 It is proposed to retain the existing cycle store within the forecourt. A planning condition can secure its retention and also the uncovered parking currently available

alongside the boundary wall. There is a car park and further cycle stands within reasonable distance of the site. There is space at the side of the shop, within a covered passageway which leads to the existing flats, where resident's cycles and waste can be stored. There are adequate facilities in this respect and no conflict with planning policy, which is to encourage sustainable travel.

## Security

4.24 Security issues are covered as part of the premises license and safe operation of the kitchen and associated environmental standards are public protection issues and the NPPF is clear in that planning should duplicate other legislation.

## HIGHWAY SAFETY

4.25 The National Planning Policy Framework advises that developments should provide safe and suitable access to the site for all people and minimise conflicts between traffic and cyclists or pedestrians.

4.26 The premises were previously a shop and this scheme has less commercial floor space. It is within a local centre, where multiple commercial premises are reliant upon deliveries. It would be difficult to argue that this proposed change of use would have a material impact on safety as a consequence of extra deliveries or persons travelling to the site by private car or taxi. It is expected most customers would use sustainable travel, as they would live within walking distance.

## **5.0 CONCLUSION**

5.1 The proposed use is primarily to serve the local community and allows comprehensive use of the building. The former use has relocated. Planning conditions are proposed to the extent that the proposed use would be compliant with Local Plan policy S6, which relates to cafes/restaurants/bars and residential amenity. In principle the development accords with planning policy, in particular the thrust of the NPPF to grow the economy in a sustainable way. There would be no material impact on the highway in terms of deliveries, considering the historic commercial use of the site, and there is not adequate evidence that comings and goings of customers would have an undue effect on highway safety.

## **COMMITTEE TO VISIT**

## **6.0 RECOMMENDATION:** Approve

1 TIME2 Development start within three years



2 The development hereby permitted shall be carried out in accordance with the following plans:-

Ground floor plan WG303 03A

First floor plan WG303-04A

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 There shall be no customer floor space for A3 or A4 uses beyond the areas identified on the approved ground floor plan WG303 03A.

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and the interests of residential amenity.

4 Odour

Prior to first operation of the cafe (in so far of sales of food cooked on site), details of types of food to be cooked and the odour abatement proposed (including the impact on the external appearance of the building) shall be submitted to, and approved by the Local Planning Authority, installed in accordance with the approved details and appropriately maintained thereafter. Any equipment external to the building shall be fully removed should the use cease.

Reason: In the interests of residential amenity in accordance with policy S6 of the City of York Draft Local Plan.

Informative: The extraction system should comply with the guidance given by DEFRA in the control of odour and noise from commercial kitchen exhaust systems.

5 Noise

Prior to installation, details of all machinery, plant and equipment, which would be audible outside the site, and any proposed noise mitigation measures, shall be approved by the local planning authority, implemented in accordance with the approved details, and appropriately maintained thereafter.

These details shall include average (LAeq) sound levels (A weighted), and octave band noise levels they produce. The report shall be undertaken by a specialist noise consultant or suitably qualified person and conducted in accordance with BS4142:1997. The report shall assess the impact of the additional noise sources on nearby residential properties and include any mitigation measures that are required.

Reason: In the interests of residential amenity

## 6 Use of the forecourt

Prior to first use of the forecourt as a customer seating area, a plan of the external layout and details of the position and design of the enclosure shall be approved by the Local Planning Authority. The seating area shall be set out in accordance with the approved plan and not extend beyond the annotation on the approved ground floor plan and shall leave adequate space for circulation. Only customers sat at the tables shall be allowed to use the area.

Unless otherwise agreed, the forecourt shall not be used by customers after 20.00 each day of the week. When the premises are not open the furniture shall be stored within the premises.

Reason: In the interests of residential and visual amenity, in accordance with paragraph 17 of the NPPF.

## 7 CCTV

The location, direction and extent of coverage of any required CCTV on the exterior of the building shall be approved by the Local Planning Authority prior to installation. The development shall be carried out in accordance with the approved details.

Reason: In the interests of residential amenity.

## 8 Opening Hours

The premises shall not be open to customers between the hours of 23.30 and 07.00 the following day, each day of the week.

Reason: In the interests of residential amenity, in accordance with paragraph 17 of the NPPF.

## 9 Entrance from Darnborough Street

The entrance(s) on the Darnborough Street side of the premises to the cafe/restaurant shall not be used by customers (apart from in emergency) after 20.00 each day of the week.

Reason: To prevent noise and activity having an undue impact on residential amenity, in accordance with paragraph 17 of the NPPF.

## 10 Noise

No live or amplified music or other entertainments shall be played which exceeds background noise levels, measured at a distance of 1m from the building facade.

Reason: to protect the amenity of local residents.

## 11 Cycle storage

The existing covered cycle storage area and external cycle parking area on the east side of the forecourt shall be retained for cycle storage, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity and to ensure adequate space for, and to encourage cycle use in accordance with Local Plan policies GP1 and T4 and section 3 of the National Planning Policy Framework.

## 12 Waste storage

There shall be no waste stored within the forecourt area.

Reason: In the interests of visual amenity, in accordance with Local Plan policy GP1: Design

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### 1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome: through the use of planning conditions.

#### **Contact details:**

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